IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.7.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1311 of 1996

Madras Can Factory,
a Unit of Cochin Tin Factory,
represented by its Manager
C.R.Devanand .. Appellant/ Plaintiff

vs.

1. The Madras Metropolitan
Water Supply and Sewerage Board
rep. by its Chairman and
Managing Director

2. The Special Deputy Tahsildar,
Madras Metropolitan Water
Supply and Sewerage Board .. Respondents/ Defendants

PRAYER : The Second Appeal has been filed against the judgment and decree passed in A.S.No.54 of 1995, by the III Additional Judge, City Civil Court, Madras, dated 17.4.1995, confirming the judgment and decree of the III Assistant Judge, City Civil Court, Madras, made in O.S.No.5775 of 1992, dated 30.9.1993.

For Appellant : Mr.K.Mani
For respondents : Mr.S.Rajendran

J U D G E M E N T

The second appeal has been filed against the judgment and decree, dated 17.4.1995, made in A.S.No.54 of 1995, on the file of the III Additional Judge, City Civil Court, Madras, confirming the judgment and decree, dated 30.9.1993, made in O.S.No.5775 of 1992, on the file of the III Assistant Judge, City Civil Court, Madras.

2. The plaintiff in the suit O.S.No.5775 of 1992, is the appellant in the present second appeal. The plaintiff had filed the suit on the file of the III Assistant Judge, City Civil Court, Madras, praying for a decree of declaration to declare that the distraint notice of demand bearing No.P.R.I/83/92, dated 12.5.1992, issued by the second defendant as illegal and unenforceable and for

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a permanent injunction restraining the defendants and others from enforcing the said distraint notice of demand and for costs.

3. The brief facts of the case, as stated by the plaintiff, are as follows:

The plaintiff's property was assessed by the Corporation of Madras for the year 1979-80. During the said period, the City Corporation had extended its area to Villivakkam Panchayat. The plaintiff's property was assessed on an annual value of Rs.6,500/- and the plaintiff had been called upon to pay Rs.776.75 as property tax. Subsequently, the property tax had been increased during the second half year of 1989-90 and it had been increased to Rs.4,766.50. Even though the plaintiff has been assessed for the property tax, there was no water or drainage connection to the plaintiff's property at No.274, M.T.H.Road, Villivakkam, Madras-49, from the assessment year, 1979-80 upto 1991-92. Therefore, the plaintiff has not utilised the service rendered by the defendant Board during the relevant period. Since there was no water supply and drainage connection to the plaintiff's property, the plaintiff is not liable to pay the water and drainage charges.

4. The second defendant had issued a demand notice, dated 14.3.1992, without an assessment order, calling upon the plaintiff to pay the water and sewerage charges for the year 1979-80 to 1991-92 amounting to Rs.36,271.30. Thereafter, another demand was made in Form I which had been issued, on 12.5.1992, calling upon the plaintiff to pay a sum of Rs.11,752.75 for the assessment year 1979-80 to 1991-92. The demand made by the second defendant is not in order, as it is not in accordance with the rules and regulations of the Board.

5. According to the plaintiff, there should be an assessment and only thereafter, the defendant can make a demand to pay the water and drainage charges. Since there was no order of assessment passed by the defendant Board, the demand made by the second defendant is not maintainable as it is illegal as being contrary to the provisions of law. The second notice, dated 12.5.1992, is a distraint order for which the plaintiff had sent a reply, on 10.6.1992, stating that there was no water or drainage connection provided in the plaintiff's premises at No.274, M.T.H.Road, Villivakkam, Madras-49, and that there was a difference in the amount demanded in the first and the second notices. The second defendant cannot take coercive action against the plaintiff by way of distraint proceedings as the plaintiff is not liable to pay the amount demanded. Further, the demand is barred by limitation and therefore, it is illegal and unsustainable in law.

6. The averments in the written statement filed by the defendants are as follows:

The plaintiff's property, which is situated at No.274, M.T.H.Road, Villivakkam, Madras-49, was formerly within the

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Villivakkam Panchayat. Later, it was taken over by the Madras City Municipal Corporation, on 1.6.1978. The demands for the property tax have been raised from the date of taking over by the Madras City Municipal Corporation. On the request made by the defendant Board, the Corporation of Madras furnished assessment particulars of the properties in the area in order to raise water and sewerage tax demands from I/1979-80 or from the date of assessment by the Board at 7% per annum on the annual value fixed by the Corporation of Madras leaving 23% as the property tax. Under Section 34(1) and (2), read with the proviso thereunder of the Tamil Nadu Act XXVIII of 1978 (The Madras Metropolitan Water Supply & Sewerage Act, 1978), the Government had permitted the Board to levy tax, by way of water and sewerage tax, to the extent of 20% in relation to water tax and 10% in the case of sewerage tax.

7. However, the Government in G.O.Ms.No.1604, Rural Development and Local Administration Department, dated 19.10.1978, have permitted the Board to levy 7% on the annual value fixed by the Corporation of Madras as Water and Sewerage Tax, effective from 22.7.1978. The defendant Board had started levying the tax from I/1979-80 onwards. Due to the above mentioned arrangement, the Corporation of Madras reduced 7% towards water and sewerage tax out of 30% from its property tax based on the annual assessment value from 1979-80 onwards. The water and sewerage tax is not an extra tax but forms part and parcel of the previously levied property tax by the Madras Corporation.

8. The defendant Board is empowered to collect water and sewerage tax from the property owners within the jurisdiction of the Board irrespective of the fact whether the facilities are provided or not and whether the facilities are availed of or not.

9. The defendant had further submitted that the water and sewerage tax is based on the value of annual assessment of the premises, though it is called water and sewerage tax. The defendant Board have been powered to collect the water and sewerage tax at 7% of the assessed annual value of the premises, with effect from 22.7.1978, i.e., from the formation of the Board as per G.O.Ms.No.1604, Rural Development and Local Administration Department, dated 19.10.1978 and the tax has to be paid by all the residents. Hence, the question of payment of water and sewerage tax based on the facilities provided by the Board does not arise.

10. The defendants had further submitted that the water and sewerage tax is not an additional tax but it is a component of the property tax levied by the Corporation of Madras. The Board is well within its rights to collect water and sewerage tax from the owners of the house properties dwelling within its jurisdiction irrespective of the fact whether the facilities are provided and whether the same is availed of or not by the owners of the property.

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11. The defendants had submitted that the payment of Rs.36,271.30, representing 26 half years demand, based on the annual assessment value of Rs.39,858.00 as per the summon statement set out below is in order and the same came to be revised as per the assessment details furnished by the Corporation of Madras.

Sl.No.	Period	Annual Value	Amount of Water and Sewerage Tax
.1.	I/79-80 to I/89-90	Rs.6,500.00	Rs.4,777.50 (at Rs.277/50 x 21)
.2.	II/1989-90 to II/1991-92 (5H/Y)	Rs.39,858.00	Rs.6,975.25 (at Rs.1,395.05 x5)
	Totaling		Rs.11,752.75

12. The above revision was also intimated to the plaintiff and they were requested to pay Rs.11,752.75 vide letter No.SDT/AreaV/92, dated 25.6.1992. The Board does not, independently and of its own accord, assess the water and sewerage tax. The water and sewerage tax is computed on the assessment of the Annual Value of the premises as fixed by the Corporation. There is no question of the defendants threatening the plaintiff as alleged. The defendant Board has been taking necessary action only in accordance with the existing rules. There is no question of the claim being barred by time. In view of the decision in W.P.No.13894 of 1990, Section 74 of The Madras Metropolitan Water Supply and Sewerage Board Act, 1978, clearly gives the right to the Board to recover the amount as against the plaintiff. Therefore, the suit has to be dismissed.

13. Based on the rival contentions of the parties concerned, the trial Court had framed the following issues for consideration:

"1. Whether the plaintiff is entitled to the relief of declaration as prayed for in the plaint?

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the plaint?"

14. On analysing the oral and documentary evidence, the trial Court had found that the defendants had the authority and jurisdiction to impose on the plaintiff the liability of paying the water and sewerage tax as provided under the relevant provisions of law. The trial Court had accepted the claim made on behalf of the defendant Board that the water and sewerage tax is levied based on the property tax payable by the plaintiff.

15. It was also held that the contention of the plaintiff that the water and sewerage tax cannot be imposed, if no water or sewerage connection is provided in the property belonging to the plaintiff, cannot be held to be valid, since water charges are

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different from water tax. While water charges are levied based on the actual quantum of water used, the water tax is based on the property tax payable by the plaintiff. It was also held that the defendant Board is entitled to collect the water and sewerage tax in accordance with the provisions enshrined in The Madras Metropolitan Water Supply & Sewerage Board Act, 1978. Since the quantum of water and sewerage tax payable by the plaintiff is to be decided based on the value of the plaintiff's property, as provided by the Corporation of Madras, there was a difference in the claims made by the defendant Board. The earlier claim of Rs.36,271.30 was revised and the defendant Board had claimed Rs.11,752.75 as the tax payable by the plaintiff as the revised claim.

16. From the exhibits marked in support of the claims made by the plaintiff, it was found that the claim has been made by the defendant Board directing the plaintiff to pay Rs.36,271.30 under Exhibit A.3, dated 13.3.1992, for the relevant period, as water and sewerage tax from the first half 1979-80 to the second half 1991-92.

17. From Exhibit A.2, dated 12.5.1992, the trial Court had found that the defendant Board had claimed a sum of Rs.11,752.75 as the tax payable by the plaintiff stating that distraint proceedings would be initiated against the property of the plaintiff, if there was a default in paying the arrears of tax. Based on such findings, the trial Court had dismissed the suit filed by the plaintiff.

18. Against the said judgment and decree of the trial Court, the plaintiff had preferred an appeal in A.S.No.54 of 1995, on file of the III Additional Judge, City Civil Court, Madras. The lower appellate Court had framed the following points for consideration:

> "(1) Whether the judgment of the trial Court has to be set aside?
>
> (2) Whether the demand notice has to be declared as null and void?"

19. The lower appellate Court had found that the appellant's property was situated within the Panchayat limits of Villivakkam. Villivakkam Panchayat was taken over by the Corporation of Madras and thereafter, the Corporation had issued a demand notice to the owners of the properties situated within its jurisdiction. Whileso, the Madras Metropolitan Water Supply and Sewerage Board had been formed and the Government had given powers to the said Board to collect 7% of the property tax collected by the Corporation of Madras as the water and sewerage tax.

20. The lower appellate Court had found that the main contention raised on behalf of the plaintiff was that since the plaintiff had not been provided with the water and sewerage

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connection, it is improper on the part of the defendant Board to impose the water and sewerage tax on the plaintiffs by issuing a demand notice No.P.R.I/83/92, dated 12.5.1992. The lower appellate Court had also found that the defendant Board was entitled to levy the tax on the plaintiff even though the water and sewerage facilities were not provided to the plaintiff as the water and sewerage tax payable is based on the value of the property of the plaintiff. Therefore, the lower appellate Court, by its judgment and decree, dated 17.4.1995, made in A.S.No.54 of 1995, had confirmed the judgment and decree of the trial Court. Hence, the present second appeal.

21. Heard Mr.K.Mani, the learned counsel appearing on behalf of the appellant and Mr.S.Rajendran the learned counsel appearing on behalf of the respondents.

22. The second appeal had been admitted on the following substantial questions of law:

> "1.Whether the defendant is entitled to claim the water and sewerage charges for the period 1979-80 to 1991-1992 as per Exhibit A.3?
>
> 2. Is G.O.No.1604, Rural Development and Local Administration Department, dated 19.10.1978, issued by the Government over ride the provisions of the M.M.W.S&S Board Act 1978 (TN Act 18 of 1978)?"

23. The learned counsel appearing on behalf of the appellant had contended that the respondent Board cannot issue the impugned distraint order, dated 12.5.1992, marked as Exhibit A.2 before an assessment is made and a demand notice issued to the appellant. Since no assessment was made and no demand notice was issued, the appellant was not in a position to pray for exemption in accordance with the provisions of The Chennai Metropolitan Water Supply and Sewerage Act, 1978.

24. The learned counsel appearing on behalf of the appellant had also contended that the appellant could have challenged the assessment and the consequent demand by filing an appeal under the provisions of the Act if the proper procedures had been followed by the respondent Board. However, such an opportunity was not available to the appellant. Therefore, the distraint order passed by the respondent Board under Exhibit A.2, dated 12.5.1992, is illegal and void. The Courts below have committed an error in declining to declare the said order as illegal and unenforceable.

25. The learned counsel appearing on behalf of the respondents had contended that the water and sewerage tax has been levied only in accordance with the provisions of law based on the value of the property of the appellant. A demand notice had been issued to the appellant by the respondent Board under Exhibit A.3, dated

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13.3.1992, and only thereafter, the impugned distraint order was passed under Exhibit A.2, dated 12.5.1992.

26. The learned counsel appearing on behalf of the respondents had also contended that the appellant has an alternative remedy of challenging the levy of tax by way of an appeal under Section 71 of the Act. Therefore, the contentions of the plaintiff cannot accepted.

27. On analysing the records available before this Court and based on the contentions raised on behalf of the appellant as well as the respondents, it is found that a demand notice had been issued to the appellant by the respondent Board under Exhibit A.3, dated 13.3.1992, levying a tax of Rs.36,271.30 and granting seven days time to pay the said amount and stating that on failure to comply with the demand distraint proceedings could be initiated against the appellant. Thereafter, under Exhibit A.2, dated 12.5.1992, the distraint order has been issued for a sum of Rs.11,702.75, revising the earlier demand, based on the value of the property as assessed by the Corporation of Madras. It is seen that an appeal remedy has been provided under Section 71 of The Chennai Metropolitan and Sewerage Act, 1978, to file an appeal against the decision or determination fixing the rate of water and sewerage tax or demanding the payment of such tax under the provisions of the Act. It was held by this Court in TAMIL NADU ELECTRICITY BOARD REPRESENTED BY EXECUTIVE ENGINEER (OPERATION AND MAINTENANCE), PANTRUTI AND OTHERS Vs. CHAKKARAVARTHY ((2005) 2 M.L.J. 426), that the suit filed challenging the order passed by an authority of the defendant department cannot be maintained, in view of the specific provision for appeal provided under the relevant law applicable to the case.

28. In such circumstances, this Court is of the considered view that the appellant has not shown sufficient cause or reason to interfere with the judgment and decree passed by the Courts below. Hence, the second appeal stands dismissed confirming the judgment and decree passed by the Courts below. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The III Additional Judge,
   City Civil Court,
   Madras.

2. The III Assistant Judge,
   City Civil Court, Madras

3. The Section Officer,
VR Section,
High Court, Madras.

1 cc to Mr.S. Rajendran, Advocate, SR. 41476

S.A.No.1311 of 1996

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